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a party in another suit on a different cause of action it must be rendered in a proceeding between the same parties or their privies, and the point must have been involved in both suits and determined on its merits.

2. JUDGMENTS—*Evidence—distress warrant—unlawful detainer.* Where rent is payable by the month, and a distress warrant is sued out for rent in arrear, and three months before and two months after suing out such warrant, actions of unlawful detainer are sued out by the landlord against the tenant to recover possession of the leased premises, and there is judgment in both in favor of the defendant, these judgments, although between the same parties, are not evidence that no rent was due at the time the distress warrant was sued out.

3. LANDLORD AND TENANT—*Unlawful distress—measure of damages.* In an action, under section 2898 of the Code, to recover damages for distraining property for rent not due, in the absence of any charge of fraud, malice, oppression or other special aggravation, the measure of the plaintiff's damages is compensation of the injury suffered—such damages as are the natural and proximate result of the injury complained of.

4. INSTRUCTIONS—*Conflicting evidence.* Where the evidence is conflicting the court, upon request, should give instructions which correctly propound the law according to the different views which the jury may take of the evidence.

5. LANDLORD AND AGENT—*Unlawful distress by agent—liability of landlord.* A landlord who employs an agent to lease his property and receive the rents is not liable in damages for the act of the agent in unlawfully suing out a distress warrant against the tenant, unless he directed or approved the proceedings had under the distress warrant, or failed to repudiate such proceedings after full knowledge of them.

6. INSTRUCTIONS—*Weight of evidence.* In an action to recover for loss of profits in business, where the plea is not guilty, an instruction which assumes that there has been such loss, or which is ambiguous on this point should not be given.

7. PLEADING—*Several defendants—separate pleas—general verdict for plaintiff.* In an action of tort against several defendants for an alleged joint trespass, although they severally plead not guilty, there is but one issue submitted to the jury, and a general finding in favor of the plaintiff, without naming the defendants, is a finding against all the defendants.

8. PRINCIPAL AND AGENT—*Special powers—exceeding authority of principal.* An authority from a landlord to an agent to receive tenants for his property, "receive rents" and pay for repairs and insurance, does not authorize an agent to sue out a distress warrant for rent in arrear, and levy it on the property of the tenant.

SHIPMAN v. FLETCHER.—Decided at Wytheville, June 13, 1895.

1. CHANCERY PRACTICE—*Commissioners in chancery.* Commissioners in chancery are appointed to assist the court, not to supplant it, and their entire work is always subject to revision by the court, or the judge in vacation. While a court of equity may avail itself of the aid of its commissioners, it cannot abdicate its authority or powers, nor surrender to any one the performance of its judicial functions.

2. **CHANCERY PRACTICE—Report of commissioner—weight given.** The report of a commissioner in chancery, even where the evidence is conflicting, is not entitled to the weight of the verdict of a jury. The functions of a commissioner and of a jury are entirely different. Courts of chancery find and decide both the law and the facts; juries are the triers of the facts only.

3. **CHANCERY PRACTICE—Report of commissioner—weight given—exceptions—duty of court.** The report of a commissioner in chancery is *prima facie* correct, and objections to it must be raised by exceptions. When this is done it is the duty of the court to examine the evidence returned by the commissioner, and upon which his conclusions are based, and review his conclusions. If the evidence has not been taken by the commissioner, nor in his presence, the court has the same means of ascertaining the truth as the commissioner, and is more competent to pass on the evidence and draw correct conclusions. If the evidence consists of depositions and has been taken by the commissioner or in his presence, and is conflicting, and his conclusions are clearly supported by competent and unimpeached witnesses, his report will not be disturbed, unless it is clear that the weight of the testimony is contrary to his conclusions. But, even in such case, the court will review and weigh the evidence, and if not satisfied with the findings of the commissioner will overrule them. The report will only be accepted as conclusive when the testimony, though conflicting, is evenly balanced, and the report is supported by the testimony of competent and unimpeached witnesses.

4. **CHANCERY PRACTICE—Commissioner's report—final decree—motion under section 3451 of the Code.** Where a final decree has been entered in a cause confirming the report of a commissioner, without exception or objection, the appellate court will not reverse such decree for errors alleged in said report and not appearing on the face of it. And in a litigated case such errors cannot be corrected by the trial court on motion under section 3451 of the Code. This section provides for the correction of errors generally, on a judgment by default or bill taken for confessed, and for misprisons of the clerk, or clerical misprisons of the judge, where the judgment may be safely corrected in the manner prescribed by that section. It has no application to errors in the reasoning and conclusions of the court about contested matters.

5. **JUDGMENT—Presumption.** The judgment of a court of competent jurisdiction is presumed to be right until the contrary is shown. An appellate court will not overturn such judgment unless it is shown to be wrong.

POWELL, WHITEHURST & Co. v. BERRY AND OTHERS.—Decided at Wytheville, June 27, 1895.—*Harrison, J.*:

1. **CHANCERY PRACTICE—Specific performance.** Application for the specific performance of a contract is addressed to the sound discretion of the court, and will not be granted unless the applicant shows that he has been ready, prompt and eager to perform the contract on his part. If he has been in default, a court of equity will leave him to such remedy as he may have in a court of law.

2. **CHANCERY PRACTICE—Rescission—cancellation.** An application to a court of chancery to rescind or cancel a contract for the sale of real estate, like that for